SUPREME COURT OF THE UNITED STATES.

No. 283.

GEORGE S. DENISON, ACTING COLLECTOR OF CUSTOMS, USE OF THE UNITED STATES, APPELLANTS,

vs.

PUIG BROTHERS, THEODOMÍRO AVENDAÑO, AND EUGENE TROISGROIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 United States Circuit Court, fifth circuit and district of Louisiana.

GEORGE S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *et al.*
No. 3,518.

Petition.—Filed January 31st, 1865.

GEORGE S. DENISON, acting collector of customs, use of the United States,
vs.
PUIG BROTHERS *et al.*
No. 3,518.

To the honorable the judges of the Circuit Court of the United States for the sixth judicial circuit and eastern district of
2 Louisiana, sitting in New Orleans:

George S. Denison, acting collector of customs of the port of New Orleans, district of New Orleans, who sues for the use of the United States of America, plaintiff and petitioner, complains of Miguel Puig, Antonio Puig, Magiu Puig, partners in trade, doing business under the firm, name, and style of Puig Brothers, and Eugene Troisgros and Theodomiro Avendaño, all of the city of New Orleans, State of Louisiana, defendants.

For that whereas the said defendants, Puig Brothers, Eugene Troisgros, and Theodomiro Avendano, heretofore, to wit, on the 28th day of September, 1864, at New Orleans, State of Louisiana, and within the jurisdiction of this court, by their certain writing obligatory, sealed with their seals, and now shown to the court here, and attached to this petition, and made part thereof, acknowledge themselves to be held and firmly bound unto George S. Denison, acting collector of customs at the port of New Orleans, in the sum of
3 sixteen thousand dollars, to be paid to the said George S. Denison, acting collector of customs, or his successor, which said writing obligatory was and is subject to certain conditions thereunder written, to the effect following, to wit: that if the above bounden parties shall within four months from the date thereof produce to and deposit with said acting collector, or his successor, the certificate of the U. S. consul at Havana, that the following articles, to wit, 494½ coils of rope, and 295 coils of rope, for which the said acting collector has this day granted permission to be shipped on board the Spanish barque Theresita, whereof is master, bound to the aforesaid port of Havana, have been delivered at said port of Havana, and if no portion of the above-described merchandise shall be landed in any part of the so-called southern confedracy, or used in affording and aid and comfort to persons in rebellion against the authority of the United States government, then this obligation to be
4 null and void, otherwise be and remain in full force and effect.

And the said petitioner, for the use aforesaid, for assigning a breach of said conditions of said bond, avers that the said defendants have hitherto wholly failed and refused within four months from the date of said bond, to wit, from the 28th day of September, 1864, to produce to and deposit with the said acting collector, George S. Denison, the certificate of the U. S. consul at Havana, that the following articles named in said bond, to wit, 494½ coils of rope, and 295 coils of rope, for which the said George S. Denison acting collector, did on said 28th day of September, 1864, grant permission to be shipped on board the Spanish bark Theresita to Havana, had been delivered at said port of Havana, and that no portion of the above described merchandise was landed in any part of the so-called southern confederacy, and that no portion of said goods were used in affording aid and comfort to persons in rebellion against the authority of the United States government, and still do neglect and refuse to
5 produce to and deposit with said George S. Denison, acting collector, the said certificate of the said U. S. consul at Havana, as stipulated in said defendants' bond.

That by reason of the said breach of the said writing obligatory the same has become forfeited, according to the statute in such case made and provided, and an action hath accrued to said petitioner, use as aforesaid, to demand and have of and from the said defendants the said sum of $16,000; yet the said defendants, although often requested so to do, have not as yet paid the said sum of money to the said petitioner, use as aforesaid, according to the said writing obligatory, and its conditions, but to pay the same have hitherto wholly refused, and still do refuse, to the damage of the said petitioner, use as aforesaid, $16,000. Said petitioner, use as aforesaid, prays that said defendants be cited to answer this petition; and that after due proceedings had that there be judgment in solido in favor of your petitioner, use as aforesaid, against the said defendants in the sum of $16,000; and petitioner, use as aforesaid, prays for costs and
6 general relief.

(Signed) RUFUS WAPLES,
U. S. Att'y.

Bond.—Filed with petition January 31*st*, 1865, *and offered by ptaintiff November*, 19*th*, 1866.

No. 1,623.

Know all men by these presents, that we, Puig Brothers, of New Orleans, and of , are held and firmly bound unto Geo. S. Denison, acting collector of the customs at the port of New Orleans, in the sum of sixteen thousand dollars, lawful money of the United States, to be paid to the said acting collector, or his successor, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents.

Signed, sealed, and dated at New Orleans, La., this 28th day of

September, one thousand eight hundred and sixty-four, in the
7 presence of Wm. F. Perkins. The conditions of this obligation are such, that if the above bounden parties shall, within 4 months from the date hereof, produce to and deposit with said acting collector, or his successor, the certificate of the United States consul at Havana, that the following articles, for which the said acting collector has this day granted permission to be shipped on board the Spanish b'k Theresita, whereof is master, bound to the aforesaid port of Havana, have been delivered at said port; and if no portion of the above-described merchandise shall be landed in any part of the so-called southern confederacy, or used in affording aid and comfort to persons in rebellion against the authority of the United States Government; then this obligation to be null and void, otherwise to be and remain in full force and effect.

Marks.	Numbers.	Number of packages.	Description.
		494½ 295	Coils rope. Coils do.

[L. S.] Pr. pro. PUIG BROS.
[L. S.] (Signed) E. TROISGROS.
[L. S.] " E. TROISGROS.
[L. S.] " T. AVENDARIO.

Witness:
[L. S.] (Signed) WM. F. PERKINS.

[5-cent U. S. rev. s., cancelled.]

8 *Citation.—Issued January 31st, 1865.*

GEO. S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *et al.*
} No. 3,518.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Theodomiro Avendano, of the city of New Orleans, State of Louisiana, to comply with the demand of George S. Denison, acting collector of customs, use of the United States, contained in the petition and bond annexed, of which copies accompany the citation, or to deliver his answer to the same, in the office of the clerk of the Circuit Court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judg-
9 ment will be rendered against him by default, which delay

is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of March, 1865.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 31st day of January, A. D. one thousand eight hundred and sixty-five, and of the independence of the United States of America the eighty-ninth year.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received February 1st, 1865; and on the same day, month, and year, served a copy of the within citation, and plaintiff's petition and bond annexed, on Theodomiro Avendano personally.

New Orleans, February 1st, 1865.

(Signed) M. EGAN,
Deputy U. S. Marshal.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

GEORGE S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *et al.*
No. 3,518.

10 *Citation.—Issued January 31st, 1865.*

You are hereby commanded to summon Eugene Froisgros, of the city of New Orleans, State of Louisiana, to comply with the demand of George S. Denison, acting collector of customs, use of the United States, contained in the petition and bond annexed, of which copies accompany this citation, or to deliver his answer to the same, in the office of the clerk of the Circuit Court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment
11 will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of March, 1865.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme court of the United States of America, at the city of New Orleans, this 31st day of January, A. D. one thousand eight hundred and sixty-five, and of the independence of the United States of America the eighty-ninth year.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received February 1st, 1865, and on the same day, month, and year served a copy of the within citation, and plaintiff's petition and bond annexed thereto, on Eugene Troisgros personally.

New Orleans, February 1st, 1865.

(Signed) M. EGAN,
Deputy U. S. Marshal.

12 *Citation.—Issued January 31st,* 1865.

GEORGE S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *& als.*
} No. 3,518.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon the firm of Puig Brothers, composed of Miguel Puig, Antonio Puig, and Magin Puig, members thereof, of the city of New Orleans, to comply with the demand of George S. Denison, acting collector, use of the United States, contained in the petition and bond annexed, of which copies accompany this citation, or to deliver their answer to the same, in the office of the clerk of the Circuit Court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New
13 Orleans, in ten days after the service hereof, or judgment will be rendered against them by default, which delay is increased one day for every ten miles the defendants' residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of March, 1865.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 31st day of January, A. D. one thousand eight hundred and sixty-five, and of the independence of the United States of America the eighty-ninth year.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

Marshal's return.

Received February 1st, 1865, and on the same day, month, and year served a copy of the within citation, and plaintiff's petition and bond annexed thereto on Puig Brothers, by leaving it at the office of said firm, in the hands of F. Martin, clerk for said
14 firm of Puig Brothers, said Martin being the legal agent and representative of Puig Brothers.

New Orleans, February 1st, 1865.

(Signed) M. EGAN,
Dy. U. S. Marshal.

Before the Circuit Court of the United States, sixth circuit and eastern district of Louisiana.

Answer.—Filed February 14, 1865.

GEO. S. DENISON, acting collector of customs, for the use of the United States,
vs.
PUIG BROTHERS, EUGENE TROISGROS, and Theodomiro Avendaño.
} No. 3,518.

The defendants, for answer to plaintiff's petition, deny all and singular the allegations therein made; they especially deny that the plaintiff had the right to exact the bond described in his petition.

For further answer they say, that the merchandise de-
15 scribed in said bond, was landed and delivered at the port of Havana; that no portion thereof was landed in any port of the so-called southern confederacy, nor used in affording aid or comfort to persons in rebellion against the authority of the United States; that proof thereof was presented to the American consul at Havana, and he was requested to furnish the certificate required by the bond, but the said consul wrongfully neglected and refused to furnish said certificate, and refused to give any reasons for his refusal. Whereupon complaint was made by the Spanish minister at Washington, to the government of the United States, and the matter is now being examined.

Wherefore your respondents pray, that the proceedings herein may be stayed until the result of the examination is known; that the plaintiff's suit be dismissed, and for general relief.

(Signed) GEO. L. BRIGHT,
Counsel for Respondents.

16 *Testimony of Henry Laverty, witness for defendants.—Filed February* 18*th*, 1865, *and offered by defendant, November* 19*th*, 1866, *m'k'd "A."*

GEO. S. DENISON
vs.
PUIG BROTHERS.
} No. 3,518.

Testimony taken in the presence of the district attorney, and Bright, esq.

Henry Laverty, being sworn for defendants, says: I shipped as pilot on board the bark Teresita, on her trip from New Orleans to Havana, on or about 12th or 13th October, 1864. I went to Havana on her. Every pound of her cargo that she took on board at New Orleans was delivered at Havana; saw her discharging; her freight was landed at the wharf what is called Mole; saw her fully discharged; was on board of her every other day.

The Teresita did not stop at any place, nor was she boarded by any vessel, before she arrived at Havana. After her dis-
17 charge she remained in Havana until I left, which was about 1½ months after her arrival.

From the day we left New Orleans until the day the pilot came aboard in Havana, we touched at no place, nor were we boarded by any person, nor did any person come aboard.

Cross-ex. by plaintiff.

I know no more about the coils than what I have already stated; don't know how many coils of rope there were.

I saw coil rope come ashore at Havana, but don't know that all came ashore, not knowing how much there was.

Acting as pilot, I was 4 hours on and 4 hour hours off the ship.

(Libellants reserve all legal exceptions.)

I can't say that any of this rope went into the custom-house at Havana.

(Signed) HENRY LAVERTY.

Sworn to and subscribed before me, this 18th February, 1865.

[SEAL.] (Signed) CHS. CLAIBORNE,
U. S. Commissioner.

18 *Order, cause fixed for trial.—From the minutes of March 13th 1865.*

NEW ORLEANS,
Monday, March 13th, 1865.

Court met pursuant to adjournment. Present, Hon. Edward H. Durell, dist. judge; absent, Hon. John Catron, presiding judge.

GEO. S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHER *& al* } No. 3,518.

On motion of the district attorney, it is ordered that this cause be assigned for trial for Friday the 17th day of March, 1865, at 11 o'clock, at 11 o'clock a. m., and that defendants' counsel be notified thereof.

Circuit Court of the United States for the sixth judicial circuit and eastern district of Louisiana.

Notice of trial.—Issued March 13th, 1863.

19 GEO. S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *& al.* } No. 3,518.

You are hereby notified that this case is assigned for trial for Friday the 17th day of March, A. D. 1865, at 11 o'clock a. m.

By order of court.

Witness my hand and the seal of the said court, at New Orleans, this 13th day of March, A. D. 1865.

(Signed) F. B. VINOT, *D'y Clerk.*

To GEO. L. BRIGHT, Esq.

Marshal's return.

Received March 13th, 1865; and on the 14th day of the same month and year served a copy of the within notice on George L. Bright, esq., personally.

New Orleans, March 14th, 1865.

(Signed) M. EGAN,
Deputy U. S. Marshal.

20 *Motion and order continuance—From the minutes of March 17th, 1865.*

GEO. S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *et als.* } No. 3,518.

This cause having been assigned for this day, was called for trial, and on motion of Geo. L. Bright, esq'r, of counsel for defendants, in presence of the district attorney, it was ordered that it be continued indefinitely.

Order cause fixed for trial.—From the minutes of March 28th, 1865.

GEO. S. DENISON, acting collector, use of the United States,
vs.
PING BROTHERS *et al.* } No. 3,518.

On motion of the district attorney, it is ordered that this cause be assigned for trial for Friday next, at 11 o'clock a. m., and that defendants' counsel be notified thereof.

21 Circuit Court of the United States for the sixth judicial circuit and eastern district of Louisiana.

Notice of trial.—Issued March 28, 1865.

GEO. S. DENNISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *et al.* } No. 3,518.

You are hereby notified that this case is assigned for trial for Friday, the 31st day of March, A. D. 1865, at 10 o'clock, a. m.

By order of the court.

Witness my hand and seal of the said court, at New Orleans, this 28 day of March, A. D. 1865.

[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

To GEO. L. BRIGHT, Esq.

Marshal's return.

Received March 28, 1865; and on the same day, month, and
22 year served a copy of the within notice on Geo. L. Bright, esq., by leaving it at his office in the hands of his clerk.
March 29, 1865.
(Signed) M. EGAN,
Deputy U. S. Marshal.

Order cause continued.—From the minutes of March 31st, 1865.

GEO. S. DENISON, acting collector, use of the United States, *vs.* PUIG BROTHERS *& als.* } No. 3,815.

By consent of counsel, ordered that this cause be continued indefinitely.

Order cause fixed for trial.—From the min. April 4, '65.

GEO. S. DENISON, acting collector, use of the United States, *vs.* PUIG BROTHERS *et al.* } No. 3,815.

On motion of R. Waples, esq., U. S. attorney, it is ordered
23 that this cause be assigned for trial for Tuesday, 11th day of April, 1865, at 11 o'clock a. m., and that all parties interested be notified thereof.

Circuit Court of the United States for the sixth circuit and eastern district of Louisiana.

Notice of trial.—Issued April 4th, 1865.

GEO. S. DENISON, acting collector, use of the United States, *vs.* PUIG BROTHERS *et al.* } No. 3,518.

You are hereby notified that this case is assigned for trial for Tuesday, the 11th day of April, A. D. 1865, at 11 o'clock, a. m.
By order of the court.
Witness my hand and the seal of the said court at New Orleans, this 4th day of April, A. D. 1865.
[SEAL.] (Signed) F. B. VINOT,
Deputy Clerk.

To GEO. L. BRIGHT, Esq.

Marshal's return.

24 Received April 5th, 1865, and on the same day, month, and year served a copy of the within notice on Geo. L. Bright, esq'r, personally.

April 6th, 1865.

(Signed,) M. EGAN.
Dep'y U. S. Marshal.

Order continuance.—From the minutes of April 11, 1865.

GEO. S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *et al.*
} No. 3,518.

This cause was called for trial. District attorney for plaintiff; Geo. L. Bright, esq., for defendants. After hearing pleadings and counsel, upon the application of the district att'y, the cause is continued to Tuesday next, 18th inst., at 11 o'clock a. m.

Order continuance.—From the minutes of April 18, 1865.

25 GEO. S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *et al.*
} No. 3,518.

This cause was called for trial. Present, Rufus Waples, esq., U. S. att'y, for plaintiff.

Absent, Geo. L. Bright, esq., att'y for defendants.

When it is ordered by the court that the cause be continued indefinitely.

Note of evidence.—Filed November 19, 1865.

GEO. S. DENISON, act'g collector, &c.,
vs.
PUIG BROTHERS *et al.*
} No. 3,518.

Plaintiff offered in evidence the bond sued on.

Defendants offered the testimony of H. Laverty, marked "A," and the certificate marked "B."

26 The bond offered in evidence by plaintiff will be found at page 6 of this transcript.

The testimony of Laverty, marked "A," offered in evidence by defendants, will be found at page 15 of this transcript.

Document B.—Offered by defendants, and filed Nov. 19, 1866.

Certificate of the consignee.

The following certificate must express the marks and numbers, if any, on the packages, the number of packages and contents, with weight, measure, or gauge, in letters, not in figures, and to be signed by the consignee residing abroad; but if the goods are consigned to the master, or any other person on board the vessel, it must be signed by the purchaser or purchasers, specifying that he or they were such, and then verified and sworn to according to the subsequent forms.

27 Gassol Pardo & Co., of the city of Havana, do hereby certify that the goods or merchandise hereinafter described have been landed this , between the and , 186 , from on board the Spanish bark Teresita, of , whereof Ferrer is at present master, viz:

Marks.	Numbers	Remarks.
M. H. C.	494½	Four hundred and ninety-four half coils of rope, vg. 41,081 lbs.
[M. H. C.]	11	Eleven coils rope, vg. 1,498 lbs.
[M. H. C.]	44	Forty-four coils rope, vg. 6,411 lbs.
McGrew.	120	One hundred and twenty coils of rope, vg. 18,844 lbs.
M. H. C.	120	One hundred and twenty coils of rope, vg. 15,987 lbs.
C. P. & Co.	.....	One sealed box, cg. $5,045 in American silver and foreign gold.

Which, according to the bills of lading for the same, were shipped on board the said bark Teresita, at the port of New Orleans, in the United States of America, on or about the 10th day of October, 1864, and consigned by Messrs. Puig, Hermanos to us.

Dated at the city of Havana, the day of .

(Signed) GASSOT, PARDO & CO.

28 *Oath of the master and mate.*

PORT OF HAVANA:

We, G. V. Ferrer, master, and Feruim Savety, mate of the Spanish b'k Teresita, of , lately arrived from the port of New Orleans, in the United States of America, do solemnly swear that the goods or merchandize enumerated and described in the preceding certificate, signed by Gassol, Pardo & Co., of the city of Havana, were actually delivered at this port from on board the said city within the time therein specified.

(Signed) Captain J. FERRER.
PENSEY LAVITY.

Sworn to, at the city of Havana, this 1 day of ,186 , before

(Signed) THOS. SAVAGE,
U. S. Consul General.

This oath to be taken by the master and mate, or, in case of their death, by two other principal officers of the vessel. If taken abroad, where a consul or agent of the United States resides, it must be taken before him. But, if they choose, the oath may be omitted until they return home.

29 *Consular certificate.*

I, consul general of the United States of America, at the city of Havana, do declare that the facts set forth in the preceding certificate, subscribed by Gassot, Pardo & Co., of the city of Havana, and dated the , are, in my opinion, just and true, and deserving full faith and credit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, at Havana, this 13th day of June, 1865.

(Signed) WM. F. MINOR.
By THOS. SAVAGE,
Consul General.

This verification to be signed by the consul or other public agent of the United States, if one resides at the place.

Hearing and submission of cause.—From the minutes of November 19th, 1866.

30 GEO. S. DENISON, acting collector use of the United States, *vs.* PUIG BROTHERS *& als.* } No. 3,518,

This cause came up for trial—P. H. Morgan, esq., U. S. district attorney, for plaintiff; Geo. L. Bright, esq'r., for defendants—when, after hearing the pleadings and the evidence, the court took time to advise.

Circuit Court of the United States, 5th circuit and district of Louisiana.—November term, 1866.

NEW ORLEANS, *Monday, December 3d,* 1866.

Court met pursuant to adjournment. Present: Hon. E. H. Durell, district judge.

Judgment.

GEO. S. DENISON, acting collector, use of the United States, *vs.* PUIG BROTHERS *& als.* } No. 3,518.

31 For reasons orally assigned by the court, and which will be reduced to writing hereafter, it is ordered, adjudged, and decreed that judgment be entered in favor of the defendants, with costs.

Judgment rendered December 3rd, 1866.
Judgment signed December 7th, 1866.

(Signed) E. H. DURELL, *Judge.*

United States Circuit Court.

Reasons for judgment.—Filed December 13th, 1866.

GEO. S. DENISON, acting collector, use of the United States,
vs.
PUIG BROTHERS *et als.*
No. 3,518.

This suit is based upon an alleged breach of the conditions of a bond given by the defendants to the late acting collector of the customs at the port of New Orleans, under color of an act of Congress, approved May 20, 1862, and of certain regulations made by the Secretary of the Treasury in pursuance thereof. Said act, in its
32 2d section, provides "that whenever a permit or clearance is granted for either a foreign or domestic port, it shall be lawful for the collector of the customs granting the same, if he shall deem it necessary under the circumstances of the case, to require a bond to be executed by the master or owner of the vessel, in a penalty equal to the value of the cargo, and with sureties to the satisfaction of such collector, that the said cargo shall be delivered at the destination for which it is cleared or permitted, and that no part thereof shall be used in affording aid or comfort to any person or parties in insurrection against the authority of the United States." By section 3d of said act the Secretary of the Treasury is empowered to "establish all such general and special regulations as may be necessary or proper to carry into effect the purposes of this act." The Secretary of the Treasury did, on the 11th of September, 1863, and in accordance with the power so conferred upon him, establish the following reguation, paragraph 35:

"Whenever application is made to a collector or surveyor, authorised to grant it, for a permit, license, or clearance, for either
33 a foreign or domestic port, if for satisfactory reasons he shall deem it necessary to prevent the cargo of the vessel from being used in affording aid or comfort to any person or parties in insurrection against the authority of the United States, he shall require a bond to be executed by the master or owner of the vessel, in a penalty equal to the value of the cargo, and with sureties to the satisfaction of such collector or surveyor, conditioned that the said cargo shall be delivered at the destination for which it is cleared or permitted, and that no part thereof shall be used in affording aid or comfort to any person or parties in insurrection against the authority of the United States, with the knowledge or consent or connivance of the owner or shipper thereof, or with the knowledge or consent or connivance of the master of the vessel on which the same may be laden, or of other persons having control of the same, until after delivery to the proper consignee, and the sale or other disposition by him in good faith of said cargo."

The bond, upon the alleged breach of the conditions of
34 which this suit is based, is in the following words:

Know all men by these presents, that we, Puig Brothers, of

New Orleans, and E. Troisgros and T. Avendano, of New Orleans, are held and firmly bound unto Geo. S. Denison, acting collector of the customs at the port of New Orleans, in the sum of sixteen thousand dollars, lawful money of the United States, to be paid to the said acting collector or his successor, for which payment, well and truly to be made, we firmly bind ourselves, our heirs, executors, administrators, and assignees firmly by these presents.

Signed, sealed, and dated at New Orleans, La., this 28th day of September, 1861, in presence of W. F. Perkins.

"The conditions of this obligation are such that if the above bounden parties shall within four months from the date hereof produce to and deposit with said acting collector or his successor the certificate of the United States consul at Havana, that the following articles, for which the said acting collector has this day granted permission to be shipped on board the Spanish bark Teresita, whereof is master,
bound to the aforesaid port of Havana, have been delivered
35 at said port, and if no portion of the above-described merchandise shall be landed in any part of the so-called southern confederacy or used in affording aid or comfort to persons in rebellion against the authority of the United States government, then this obligation to be null and void; otherwise to be and remain in full force and effect."

Four months from the 28th day of September, 1864, elapsed, and no such certificate as is required by the conditions of the bond was deposited with said acting collector, or with his successor in office. Indeed no such certificate has been deposited to this day; for the certificate found in the record, and purporting to be given by the vice consul at Havana, under date of June 13, 1865, more than eight months after the delivery of the bond, is not, had it been given in time, such a certificate. It certifies to an opinion or belief, not to a fact.

The defence put in by the able counsel on the part of the defendants in this case, after alleging that the merchandise described in
36 the memorandum annexed to the bond was landed and delivered at the port of Havana, and that proof thereof was presented to the American consul at that port, who refused to furnish the required certificate, specially denies the right of the plaintiff to exact the bond sued upon.

The statute, under color of which this bond was exacted, was enacted, like many others during the late troubles, for the protection of our nationality in as supreme hour of contest for its life. Exceptional in its character and its purposes, it is to be construed largely in a contest between citizen and citizen, who each one and the other owe all, and should give all, to the safety of a common country. But in a contest between the United States and the subjects of a foreign power, bound to us in treaties of amity and of commerce, which had their existence long prior to our late troubles, and so held during all those troubles continuance, such statutes are not to be extended beyond their literal significance. It is now a matter of political history that foreign powers in amity with the United States protested against the application of the statute, under color of which

37 this action has arisen to their several subjects, alleging that in commercial pursuits it largely restrained that freedom of action which was secured to them by treaties struck and existing between their governments and our own. From these protests our government appealed to the comity of nations. To this appeal, the protestants having themselves passed through similar crises in their lives, yielded with a policy and an honesty most fit to secure peace and good feeling between the brotherhood of Christian peoples.

It is alleged in the pleadings, and I believe the fact so is, that the question under consideration is now a subject of interchange of opinion between the Spanish minister, of whose Queen the defendants are subjects, and the Secretary of State at Washington. The courts of the United States will most carefully protect the rights, whether growing out of treaties or springing from our municipal laws, of all foreigners resident upon our soil or doing business with our countrymen. The day has not yet arrived, and it is to be hoped never will arrive, when the subject of a foreign power will find it neces-
38 sary to appeal to the executive head of the United States for redress in the matter of a purely commercial transaction.

The late astute acting collector of the customs of New Orleans, considering, it would seem, that a bond conditioned in accordance with the requirements of the act of May 20th, 1862, and the regulation made by the Secretary of the Treasury in pursuance thereof, would in a case of a contest of law throw the onus probandi of a breach upon the plaintiff in the action, invented a form which he believed would both relieve the United States from the hardness of its position and take from the courts all necessity of examining into more than one fact in connection with each case, to wit, the existence or the absence of a consular certificate.

It is enough to say that neither the act nor the secretary's regulations, restrictive as they are upon the freedom of commerce, and sharp as they are for the defence of a government laboring in the throes of a great rebellion, authorise the framing or enforcement of such a condition. It is therefore ordered that judgment be
39 entered in favor of the defendants, with costs.

United States Circuit Court.

Petition for suspensive appeal.—Filed December 14, 1866.—*Petition appeal.*

GEO. S. DENISON, acting collector of customs, use of the United States, *vs.* PUIG BROTHERS *& als.* } No. 3,518.

To the hon. the judges of the Circuit Court of the United States for the 5th circuit and district of Louisiana:

The petition of P. H. Morgan, U. S. attorney, in the name and behalf of the United States of America, libellants herein, respectfully represents that judgment was rendered in the above-entitled

cause on the 7th day of December, 1866, in favor of defendants and against libellants.

That said judgment is adverse to libellants, and to their
40 manifest injury and prejudice; that the matter in controversy exceeds the sum of $2,000.

Petitioner, in behalf as aforesaid, feels aggrieved by the rendition of said decree, and is advised that the same is erroneous and ought to be reversed.

Wherefore petitioner hereby appeals from said judgment to the next term of the Supreme Court of the U. S., to be holden on the first Monday in December, 1867, and prays that this his suspensive appeal may be allowed; that said decree may be reversed, and such other thereupon made as to said Supreme Court may seem just; and that a transcript of the record in said cause, duly authenticated, may be sent to said Supreme Court without delay.

(Signed) P. H. MORGAN,
U. S. Attorney Dist. of La.

Order allowing appeal.

A suspensive appeal is allowed in this case as prayed for, return-
able to the Supreme Court of the U. S., the 1st Monday of
41 December next, the appellant being, by law, dispensed from giving bond and security in judicial proceedings.

(Signed) E. H. DURELL, *Judge.*

December 14, 1866.

42 Circuit Court of the United States, fiifth circuit and district of Louisiana.

CLERK'S OFFICE.

UNITED STATES OF AMERICA:

I, Charles Claiborne, clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 41 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Geo. S. Denison, acting collector, use of the United States, *vs.* Puig Brothers *& al.*, No. 3,518 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 1st day of May, A. D. 1867.

[SEAL.] CH'S CLAIBORNE, *Clerk.*

I, Edward H. Durell, United States judge for the district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate, as clerk of the Circuit Court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 1st day of May, A D. 1867.

E. H. DURELL, *Judge.*

43 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Theodomiro Avendaño, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition for appeal and order allowing the same, filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and district of Louisiana, wherein the United States of America are plaintiffs and appellants, and you and others are defendants, to show cause, if any there be, why the judgment rendered against the said United States, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

44 Endorsed: United States Circuit Court, No. 3,518. Citation of appeal. Geo. S. Denison, acting collector of customs, use of the United States, *vs.* Puig Brothers *et al.* To Teodomiro Avendaño.

Marshal's return.

Received December 17th, 1866; and on the 18th day of December, 1866, served a copy of the within citation of appeal on Theodomiro Avendeño, the defendant named herein, personally, at his office, No. 185, Common street, in this city.

New Orleans, December 18, 1866.

M. EGAN, *U. S. Marshal.*

45 UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Puig Brothers, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition for appeal and order allowing the same, filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and district of Louisiana, wherein the United States of America are plaintiffs and appellants, and you and others are defendants, to show cause, if any there be, why the judgment rendered against the said United States, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 15th day of December, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge*.

46 Endorsed: United States Circuit Court. No. 3,518. Citation of appeal. Geo. H. Denison, acting collector of customs, use of the United States *vs.* Puig, Brothers *et al.* To Puig Brothers.

Marshal's return.

Received December 17th, 1866; and on the 18th day of December, 1866, served a copy of the within citation of appeal on Puig Brothers, the defendants named herein, by leaving the same at their office, No. 57, Custom-house street, in this city, in the hands of M. Puig, he being one of the firm of Puig Bro's named herein.

New Orleans, December 18th, 1866.

M. EGAN, *U. S. Marshal.*

47 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Eugene Troisgros, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition for appeal and order allowing the same, filed in the clerk's office of the Circuit Court of the United States for the fifth circuit and district of Louisiana, wherein the United States of America are plaintiffs and appellants, and you and others are defendants, to show cause, if any there be, why the judgment rendered against the said United States, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge*.

48 Endorsed: United States Circuit Court. No. 3,518. Citation of appeal. Geo. S. Denison, acting collector of customs, use of the United States, *vs.* Puig Brothers *et al.* To Eugene Troisgros.

Marshal's return.

Received December 17th, 1866; and on the 18th day of December 1866, served a copy of the within citation of appeal on Eugene Troigros, the defendant named herein, personally, at his office, No. 55, Custom-house street, in this city.

New Orleans, December 18th, 1866.

M. EGAN, *U. S. Marshal.*